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08/734 346

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/734,346 10/21/96 MCCABE

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EXAMINER

E1M1/1029

GEOFFREY MCCABE  
36 EAST 7TH STREET  
#5W  
NEW YORK NY 10003

SPYROL, C

ART UNIT

PAPER NUMBER

2112

DATE MAILED: 10/29/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 9/13/97

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.  
Of the above, claim(s) 1-6, 13-22 is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☒ Claim(s) 7 is/are rejected.  
☒ Claim(s) 8-12 is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☒ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of Invention III in Paper No. 3 is acknowledged.
2. Claims 1-6 and 13-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 3.

### ***Claim Objections***

3. Claims 8-12 are objected to under 37 CFR 1.75© as being in improper form. Claim 8 depends on claim 9 yet to be recited. Claim 9 depends on claim 8 creating an endless logic loop. The metes and bound of these claims can not be determined. See MPEP § 608.01(n). Accordingly, the claims 8-12 have not been further treated on the merits.

### ***Specification***

4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 USC 112 as failing to provide an adequate written description of the invention.

The specification fails to support the invention as claimed. Specifically, neither the written specification nor the drawing support the first end of the counter spring which is closer to the second critical point connected to the body. The applicant is directed to Figure 3 of the instant application which illustrates that the first end of the counter spring which is closer to the second critical point is connected to the attachment means. Further, the specification not the drawings support the second end of the counter spring further from the second critical point being connected to the attachment means. The applicant is directed to Figure 3 of the instant application which illustrates that the second end further from the second critical point is connected to the body of the instrument.

***Claim Rejections - 35 USC § 112***

6. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The specification fails to support the invention as claimed. Specifically, neither the written specification nor the drawing support the first end of the counter spring which is closer to the second critical point connected to the body. The applicant is directed to Figure 3 of the instant application which illustrates that the first end of the counter spring which is closer to the second critical point is connected to the attachment means. Further, the specification not the drawings support the second end of the counter spring further from the second critical point being connected to the attachment means. The applicant is directed to Figure 3 of the instant application which illustrates that the second end further from the second critical point is connected to the body of the instrument.

7. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is misdescriptive. The specification fails to support the invention as claimed. Specifically, neither the written specification nor the drawing support the first end of the counter spring which is closer to the second critical point connected to the body. The applicant is directed to Figure 3 of the instant application which illustrates that the first end of the counter spring which is closer to the second critical point is connected to the attachment means. Further, the specification not the drawings support the second end of the counter spring further from the second critical point being connected to the attachment means. The applicant is directed to

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Figure 3 of the instant application which illustrates that the second end further from the second critical point is connected to the body of the instrument.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Lavineway.

Lavineway discloses an attachment means including a global tuning means (see Figure 3, 35 et al.). It is noted in light of the rejections under 35 USC 112, first and second paragraph, the claim is being interpreted consistent with the specification. Lavineway discloses the first end of the counter spring which closer to the second critical point is attached to the attachment means and the second end of the counter spring which is further from the second critical point is attached to the instrument body.

***Conclusion***

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10. Any inquiries regarding this communication should be directed to Cassandra Spyrou at  
(703) 308-1687.

CCS  
October 22, 1997

A handwritten signature in black ink, appearing to read "Cassandra C. Spyrou". The signature is fluid and cursive, with the first name "Cassandra" being more legible than the last name "Spyrou".

CASSANDRA C. SPYROU  
PRIMARY EXAMINER  
GROUP 2100